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SENATE

{ REPORT
115-344

TO TAKE LANDS IN SONOMA COUNTY, CALIFORNIA, INTO TRUST AS PART
OF THE RESERVATION OF THE LYTTON RANCHERIA OF CALIFORNIA,
AND FOR OTHER PURPOSES

OCTOBER 5, 2018.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany H.R. 597]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (H.R. 597) to take lands in Sonoma County, California, into trust as part of the reservation of the Lytton Rancheria of California, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill, H.R. 597, provides congressional authorization for the U.S. Department of the Interior (DOI) to take land into trust for the Lytton Rancheria of California (Lytton Rancheria or Tribe).

BACKGROUND

From the late 1940s to the early 1960s, federal Indian policy shifted to the purported assimilation of Native Americans into society, coupled with the termination of the federal trust relationship with Indian tribes. Consistent with these policies of assimilation and termination, the 1958 California Rancheria Act, authorized the Secretary to terminate the federal government's trust supervision of 41 California reservations, including the Lytton Rancheria.¹ As a result of that Act and the land transactions that followed, the Lytton Rancheria lost all of its traditional homelands.

In the late 1960s, the federal government pivoted to a policy of self-determination, thereby repudiating its past policy of termi-

¹ California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, 619-21 (1958).

nation. As a result of this policy shift, Congress “restored” some Indian tribes, while others were restored through litigation.² In 1987, the Lytton Rancheria joined three other Indian tribes in a federal lawsuit that challenged the termination of the trust relationship. In 1991, Scotts Valley, Guidiville, and Lytton Rancherias settled the lawsuit and were restored to federally recognized status under the stipulated judgment.³

The settlement reached between the parties stated that the termination of the Lytton Rancheria was illegal and that the descendants were entitled to the rights and benefits of individual Indians.⁴ While the settlement provided that the Tribe could organize under the Indian Reorganization Act, the stipulation also assured nearby landowners, who intervened in the suit, that the Lytton Rancheria would not conduct gaming in Alexander Valley except in conformity with the County’s general plan and the Indian Gaming Regulatory Act (IGRA).⁵ Since the court entered judgment, the DOI has listed Lytton Rancheria as a recognized Indian tribe in the Federal Register every time such notices were issued between 1992 and 2018.⁶

The settlement and stipulated judgment, however, did not include the return of any lands to the Lytton Rancheria. In 2000, Congress passed the Omnibus Indian Advancement Act, which directed the Secretary of the Interior to take 9.5 acres of land in San Pablo, California into trust for the Tribe, declared those lands to be part of the Tribe’s reservation, and deemed the land as eligible for gaming under the IGRA. Congress clarified the following year that the provisions of IGRA, other than those relating to the land’s eligibility for gaming, apply to gaming on the San Pablo Property.⁷

SUMMARY OF THE BILL AND NEED FOR LEGISLATION

The bill, H.R. 597, would place 511 acres of land into trust for the Lytton Rancheria through a mandatory trust acquisition by the DOI. This fee land is located adjacent to the Town of Windsor, near the Tribe’s original homelands, and was purchased with tribal revenues. The land, once it is held in trust for the Tribe, will reestablish an area for the Lytton Rancheria to rebuild its homelands by constructing homes and government facilities, expand economic development, including viniculture, and provide an area to practice traditional and religious teachings, all for the tribal community.

The Lytton Rancheria has spent years negotiating with the County of Sonoma (County), a local school district, and a local fire department to agree to three memoranda of agreement (MOA) that provide for the mitigation of any potential off-reservation impacts

²See *Amador County, California v. Salazar*, 640 F.3d 373, 375 (D.C. Cir. 2011) (discussing the 1983 stipulated order in *Hardwick v. United States*, No. C-79-1710 (N.D. Cal.)).

³*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States of America*, No. C-86-3660-WWS (N.D. Cal. Mar. 15, 1991).

⁴According to the district court in *Artichoke Joe’s*, the 1961 termination was illegal because Public Law 85-671 §3(c) required the federal government to “install or rehabilitate . . . irrigation or domestic water systems” before the land was distributed, or within a reasonable time after the land was distributed. *Artichoke Joe’s California Grand Casino v. Norton*, 278 F.Supp.2d 1174, 1177 (E.D. Cal. 2003) (detailing the history of litigation and describing the settlement). The federal government never constructed the required water system improvements on the Lytton Rancheria’s lands, according to the Tribe. *Id.*

⁵See *Artichoke Joe’s*, 278 F.Supp.2d at 1177 (detailing the history of litigation and describing the settlement).

⁶The list is published each year pursuant to the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791, codified at 25 U.S.C. § 479a.

⁷Section 128 of the Department of the Interior and Related Agencies Appropriation Act of 2002, Pub. L. No. 107-63, 115 Stat. 414, 442 (Nov. 5, 2001) (“2001 Amendment”).

from uses of the land by the Tribe. On May 27, 2015, Governor Jerry Brown, Jr. sent a letter to Representative Huffman supporting the Lytton Rancheria Homelands Act of 2015, which was a bill similar to the current H.R. 597. Both the Lytton Rancheria Tribal Council and the County of Sonoma Board of Supervisors voted unanimously to support the MOA and federal legislation to take the lands into trust for the Tribe.

The bill includes a permanent gaming prohibition on the lands described in section 4 of H.R. 597, specifically those lands that lie north of a line that runs in a cardinal east and west direction from the point where Highway Route 12 crosses Highway 101 as they are physically on the ground and used for transportation on January 1, 2016, and extending to the furthest extent of Sonoma County. Following the Committee legislative hearing on H.R. 597, the Lytton Rancheria and County agreed to further amend the MOA to expand the permanent prohibition on gaming to cover the entire county, not just the lands described in the bill. This MOA goes beyond the language in the Act to ensure that new gaming will not be conducted in the County by the Lytton Rancheria. On June 16, 2018, Margie Mejia, Tribal Chairperson, and Larry Stidham, Legal Counsel for the Tribe, signed the amended MOA. On August 7, 2018, David Rabbitt, Vice Chair of the County Board of Supervisors, and Bruce Goldstein, County Counsel, signed the amended MOA.

LEGISLATIVE HISTORY

On January 20, 2017, Representative Denham introduced H.R. 597, the Lytton Rancheria Homelands Act of 2017, which was referred to the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. The full Committee on Natural Resources of the House of Representatives favorably reported the bill on June 27, 2017, without amendment. The House of Representatives passed the bill on July 11, 2017.

On July 12, 2017, the bill, H.R. 597 was received in the Senate and referred to the Committee on Indian Affairs. On April 25, 2018, the Committee held a legislative hearing on the bill. On July 11, 2018, the Committee held a duly called business meeting to consider H.R. 597. The Committee passed H.R. 597 by voice vote and ordered the bill to be favorably reported.

During the 114th Congress, the Lytton Rancheria Homelands Act of 2015, H.R. 2538, was introduced by Representatives Huffman and Denham on May 21, 2015 and referred to the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. Representative Thompson was added as a co-sponsor on June 9, 2015.

The House Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on H.R. 2538 on June 17, 2015. On February 2, 2016, the House Subcommittee discharged the bill and the full Committee on Natural Resources considered H.R. 2538 during a mark-up session, at which the bill was ordered to be reported, as amended, by unanimous consent. On June 21, 2016, H.R. 2538 was placed on the Union Calendar where no further action was taken on the bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the Act as the “Lytton Rancheria Homelands Act of 2017.”

Sec. 2. Findings

This section explains the history of Lytton Rancheria, a federally recognized tribe, and how they lost their trust status and homelands. Through litigation, the Lytton Rancheria and other Indian tribes challenged the loss of their trust status. In a Stipulated Judgement, the court restored the Lytton Rancheria’s trust relationship with the United States and held that the Tribe would have the “individual and collective status and rights” it had prior to its termination. The Stipulated Judgement expressly contemplated the acquisition of trust lands for the Lytton Rancheria.

While the Findings section, specifically (2)(17), states that future “gaming restrictions between Sonoma County and the Tribe will be effective without further review by the Bureau of Indian Affairs,” this provision does not furnish the Tribe or the County with the authority to modify the restrictions set forth in Sections 5 and 6 of this Act, IGRA’s requirements, the 2000 Omnibus, or the subsequent 2001 Amendment.

Sec. 3. Definitions

This section provides for definitions used throughout the Act, including the term “County” to mean the Sonoma County, California; the term “Secretary” to mean the Secretary of the Interior; and the term “Tribe” to mean the Lytton Rancheria of California, a federally recognized Indian tribe.

Sec. 4. Lands to be taken into trust

This section specifies the land that will be taken into trust; the land owned by the Tribe and depicted on the map titled “Lytton Fee Owned Property to be Taken into Trust,” dated May 1, 2015. The land to be taken into trust are part of the Lytton Rancheria’s reservation and shall be administered in accordance with the laws and regulations generally applicable to property held in trust by the United States for an Indian Tribe.

Sec. 5. Gaming

This section explains that the lands taken into trust under this Act within Sonoma County are not eligible for gaming under the Indian Gaming Regulatory Act until after March 15, 2037. Lands located north of a line that runs east and west, defined by Highway 12, as it crosses Sonoma County at Highway 101, and extending to the furthest extent of Sonoma County that are physically on the ground and used for transportation are permanently ineligible for gaming under the Indian Gaming Regulatory Act (25 U.S.C. § 2710).

This Section does not create a new gaming exception within IGRA’s existing framework (see 25 U.S.C. §§ 2719(b)) but instead limits the Tribe’s ability to conduct gaming in accordance with IGRA’s existing requirements. Nothing in this Section or this Act modifies or supersedes the gaming limitations set forth in IGRA,

and the Tribe must comply with IGRA's requirements in addition to those set forth in this Act, the 2000 Omnibus, and the subsequent 2001 Amendment.

Sec. 6. Applicability of certain law

This section states the Memorandum of Agreement entered into by the Lytton Rancheria and the County concerning the trust land is not subject to review or approval of the Secretary in order to be effective, including review or approval under (25 U.S.C. § 81).

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, date August 10, 2018, was prepared for H.R. 597:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 10, 2018.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 597, the Lytton Rancheria Homelands Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 597—Lytton Rancheria Homelands Act of 2017

H.R. 597 would take into trust, for the benefit of the Lytton Rancheria of California, a federally recognized Indian tribe, certain lands located in the County of Sonoma, California. The bill would specify certain prohibitions on gaming on the affected land, consistent with an existing memorandum of understanding between the tribe and the County of Sonoma.

Using information from the Bureau of Indian Affairs, CBO estimates that implementing H.R. 597 would have no significant effect on the federal budget. CBO estimates that any change in the agency's administrative costs under the bill, which would be subject to appropriation, would not exceed \$500,000 annually.

Enacting H.R. 597 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 597 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 597 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting the authority of state and local governments to tax land taken into trust for the Lytton Rancheria. CBO estimates the costs of the mandate would be well below the threshold established in UMRA (\$80 million in 2018, adjusted annually for inflation).

H.R. 597 contains no private-sector mandates as defined in UMRA.

On July 5, 2017, CBO transmitted a cost estimate for H.R. 597, the Lytton Rancheria Homelands Act of 2017, as ordered reported by the House Committee on Natural Resources on June 27, 2018. The two versions H.R. 597 are similar and CBO's estimates of their costs are the same.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes H.R. 597 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 597.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite business of the Senate.